RESTATEMENT OF QUESTIONS PRESENTED

I. Whether federal admiralty law should apply the same principles of proximate causation for maritime torts that have been developed by the courts in the common law of torts, including principles of comparative fault and superseding cause?

II. Whether federal admiralty law should apply the same principles of causation in cases involving maritime contract claims, framed in terms of "foreseeability," as the courts apply in the common law of contracts?

LIST OF PARTIES

The petitioners are Exxon Company, U.S.A. and Exxon Shipping Company. The respondents are Sofec, Inc.; Pacific Resources, Inc.; Hawaiian Independent Refinery, Inc.; PRI Marine, Inc.; and PRI International, Inc. The third-party respondents are Bridon Fibres and Plastics, Ltd.; and Griffin Woodhouse, Ltd.

The following statement is made pursuant to Supreme Court Rule 29.6 for each of the parties represented on the brief:

(1) Sofec, Inc. has no nonwholly owned subsidiaries. The parent company of Sofec, Inc. is FMC Corporation.

(2) Bridon Fibres and Plastics, Ltd., which has since been renamed Bridon Fibres Ltd., has no nonwholly-owned subsidiaries. The parent company is Bridon Plc.

(3) Griffin Woodhouse, Ltd. has no parent companies and no nonwholly owned subsidiaries.

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No. 95-129

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

EXXON COMPANY, U.S.A.;
EXXON SHIPPING COMPANY,
Petitioners,

v.

SOFEC, INC.; PACIFIC RESOURCES, INC.;
HAWAIIAN INDEPENDENT REFINERY, INC.;
PRI MARINE, INC.; PRI INTERNATIONAL, INC.,
Respondents,

v.

GRIFFIN WOODHOUSE, LTD.;
BRIDON FIBRES AND PLASTICS, LTD.,
Third-Party Respondents.

**On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit**

BRIEF FOR THIRD-PARTY RESPONDENTS AND FOR RESPONDENT SOFEC, INC.

STATEMENT OF THE CASE

Introduction

The central factual issue in this case concerns proximate causation. In particular, the trial here properly focused on determining the proximate cause (or causes) of the stranding of the EXXON HOUSTON, an oil tanker owned and operated by petitioners. Petitioners' statement of the case portrays the events of March 2, 1989 as a continuous jumble of occurrences unbroken at any point and unaffected by any superseding causal

forces such as the subsequent extraordinary negligence of Captain Coyne and the crew. Viewing the case from this perspective, petitioners suggest that the trial court's concentration on the dispositive issue of proximate cause was ill conceived. Petitioners' strategic portrayal is not uncommon in tort cases involving multiple parties, but it badly misconceives the important role of the doctrine of proximate cause in clarifying the complex factual skeins that often must be sorted out in adjudicating such cases.

The late Judge Fong conducted a three-week bench trial in this case, and for purposes of the Court's review, the record here is fully set forth in the factual findings made by the District Court and upheld on review by the Court of Appeals.[1] Judge Fong also made a crucial ruling prior to trial, on respondents' motion to bifurcate the proceedings. Essentially, he determined that two significant sets of events occurred in this case, which took place not contemporaneously but successively: first, there were various factors that led to the initial breakout of the vessel from its mooring; second, there were a number of other events that might also be found to have led to her ultimate stranding.

Judge Fong determined that judicial efficiency and the resources of all the parties would be most usefully concentrated, as an initial matter, upon the potentially dispositive issue of proximate cause. He therefore granted respondents' motion for bifurcation. J.A. 58-75. In Phase One of the trial, he directed the parties to focus their attention on determining whether the breakout and/or other events were the proximate cause (or causes) of the vessel's stranding. J.A. 71-74, 103-04. Phase Two of the trial, if necessary, would be devoted to allocating responsibility for the events that caused

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[1] In a footnote to their brief, petitioners appear to disparage the late Judge Fong as unfamiliar with admiralty law and thus seeking help from his law clerk. *See* Petitioners' Brief on the Merits ("Pet. Br.") 4 n.4. Judge Fong, however, was a respected jurist who served for seven years as the Chief Judge of the District Court for the District of Hawaii, and during his thirteen years of service on the bench he presided in many admiralty cases. Any aspersions upon his capabilities are inappropriate and wholly unwarranted.

the breakout and to assessing damages. J.A. 73-74. Detailed factual discovery and trial preparation on these latter points might be averted, in the court's view, if it first were to determine the proximate cause (or causes) of her stranding. J.A. 71-72. Much of petitioners' ire is aimed at the bifurcation order, which they believe led the court "to try the case upside-down and backwards." Pet. Br. 4.

In the end, Judge Fong found as a factual matter that after the vessel broke loose from its mooring, it reached a position of safety more than 90 minutes before it was stranded. He also found that the acts and omissions of Captain Coyne and the crew, which occurred after the vessel had reached a position of safety, constituted extraordinary negligence. That conduct, rather than the original breakout of the vessel, was determined to have proximately caused its stranding. The legal issues must be examined against this factual backdrop.

Factual Background

This is a traditional tort case, based upon relationships that were defined in part by the terms of a contract. Petitioners entered into a contract to deliver crude oil "by vessel into Hawaiian Independent Refinery, Ewa Beach, Hawaii, via offshore single point system." J.A. 143. Among the terms of various related agreements between the parties was a warranty of "safe berth," which required the terminal to "provide a safe berth to which vessels may proceed to or depart from, and where the vessel can always lie safely afloat." J.A. 142-43. On March 1, 1989, pursuant to the terms of this contract, the EXXON HOUSTON arrived at the single point mooring at Barbers Point, Oahu, was moored there, and proceeded to discharge oil into a submerged pipeline. J.A. 144-46.

A mooring assembly, which included a chafe chain and mooring hawser, attached the bow of the EXXON HOUSTON to the mooring. Oil was discharged from the vessel to the submerged pipeline through two floating hoses, which were secured to the vessel by twelve bolts and several restraining lines. The mooring assembly held the vessel in place and allowed the hoses to float freely without any tension. J.A. 146.

Captain Coyne, the master of the EXXON HOUSTON, was acting within the course and scope of his employment at all times leading up to the stranding. Through past experience,

Captain Coyne was familiar with the mooring at Barbers Point and with maritime conditions in the vicinity. J.A. 144.

On March 2, 1989, at 1715,[2] stormy conditions at the mooring caused a link in the chafe chain to part. The vessel began to drift away from the mooring, which put the hoses under tension. By 1728, both hoses had parted, causing some oil to discharge into the water. One of the two lengths of hose remained connected to the vessel, raising concern that it could foul the propeller if the ship were to move forward. J.A. 146-47. The trial court specifically designated 1728 as the point of the "breakout" of the vessel from its mooring. At trial, the court focused the parties' efforts on determining whether the breakout or events subsequent to the breakout constituted the proximate cause (or causes) of the eventual stranding.

At 1730, the U.S. Coast Guard's rescue service made a radio call to Captain Coyne, who declined their offer of help, for he believed the situation would be resolved before assistance vessels could arrive. J.A. 148.[3] At 1740, Captain Coyne tried to anchor the vessel, but the effort foundered when he failed to follow standard practice by releasing enough of the anchor chain to hold the ship in water approximately sixty feet deep, though ample length of chain was available to do so. J.A. 148-49. At 1747, the anchor was raised. Captain Coyne never again sought to drop anchor, despite the fact that over the course of more than two hours between this time and the eventual stranding he had many opportunities to anchor the vessel safely. J.A. 150.

An assist tug was available at the mooring site to provide assistance after the breakout occurred. Although this boat, the NENE, was not able to tow the EXXON HOUSTON to safety, by 1803 it had attached a line that gave it control of the end of the remaining hose and enabled it to secure the hose away from the EXXON HOUSTON's propeller. Thereafter, Captain Coyne

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[2] All of the times stated here are Honolulu local time, given in nautical format. Thus, for example, 1715 is 5:15 p.m. Honolulu time.

[3] The trial court found that individual vessels had broken loose from the same mooring on two prior occasions, each of which concluded without incident. J.A. 148.

ordered the movements of the NENE as needed to coordinate with the movements of the EXXON HOUSTON. J.A. 147, 150. The EXXON HOUSTON backed out to sea between 1803 and 1830, on a slow course that took it away from shallow water. Its position was regularly and accurately plotted on the vessel's navigational chart from 1740 to 1830. J.A. 150-51. Between 1830 and 1947, the remaining hose was disconnected from the EXXON HOUSTON, and was pulled clear at 1947. J.A. 156.

At 1831, Captain Coyne changed course, a decision that "was not caused by any necessity or emergency and there was no reason why the vessel could not have continued to back out to sea after 1830." J.A. 151. At this point, the ship was slightly more than a mile from the shore, and about one-half mile from the grounding line in shallow water near the shore. From 1830 to 1956, the EXXON HOUSTON remained approximately the same distance from the shore, though at any time Captain Coyne could have backed the vessel "to any distance offshore he wanted" without significant risk, a course that would have been much safer than remaining near the shore while the winds tended to push the ship ashore. J.A. 151.

Between 1830 and 2004, the position of the EXXON HOUSTON was not plotted on any chart, which violated federal law, though proper charts for this purpose were easily accessible on the bridge of the vessel. J.A. 152, 168-69. "A prudent mariner would have fixed and plotted his vessel's position at least every 15 to 20 minutes" in this situation, especially in view of the ship's proximity to the shore and the difficulty of estimating its position in the dark. J.A. 152. Captain Coyne had personnel available to plot the ship's position, but failed to make use of them. Instead, from 1830 to 1956 he elected to navigate by the method of "parallel indexing," which is designed simply to keep the ship a constant distance from the shore. J.A. 153. "Parallel indexing is not a substitute for fixing the position of the vessel. Navigation by parallel indexing without plotted fixes is inherently dangerous and a violation of industry standards." J.A. 153. "Without a fix, Captain Coyne was not able to check the chart for hazards." J.A. 155. Captain Coyne testified inconsistently on these matters between his deposition and the trial, and his testimony that he knew the position of the vessel at all times was

contradicted by one of the ship's officers. J.A. 154-55. In sum, at this juncture "Captain Coyne inexplicably chose to loiter in a dangerous area without fixing his position." J.A. 175-76.

A member of the crew appeared to have been injured at approximately 1944, though the injury was not a serious one. J.A. 156, 233. Captain Coyne sent an officer to evaluate the crew member's condition, but did not order any of the other available officers to replace him, which left Captain Coyne as the only officer on the bridge from 1948 to 2000, with no other officer present to fix the vessel's position. J.A. 156. This situation also violated federal law. J.A. 156-57, 168-69. "If the bridge had been properly manned, the danger of stranding would have been avoided." J.A. 157.

At 1956, Captain Coyne commenced the final turn that culminated in the stranding of the vessel, which the court found was "not a foreseeable consequence of the breakout." J.A. 175. He "did not look at the navigational chart before commencing the final turn," even though at the time he "did not know the ship's position." J.A. 157. Given "the prevailing directions of the wind and sea" and the other conditions, "a prudent mariner would not have attempted" this turn, which "was grossly negligent, regardless of whether or not it could have been made successfully." J.A. 157-58. An officer of the ship happened to arrive on the bridge at 2000. Captain Coyne was in doubt as to the ship's position at that time and ordered the officer to plot a fix of its position, which was done at 2004. J.A. 158.

When Captain Coyne saw the 2004 fix on the navigational chart, he exclaimed, "Oh shit!" J.A. 158. He immediately ordered the vessel's speed to be increased, but moments later the EXXON HOUSTON stranded on a reef that was clearly charted on the ship's navigational chart. J.A. 158-59. "Over two and one-half hours elapsed between the breakout and the stranding. During that period, Captain Coyne and his crew had ample time to consider the situation calmly and deliberately." J.A. 159.[4] "In short, Captain Coyne recklessly ignored all

[4] At trial, petitioners contended that the final turn failed "only because of a large current that pushed the ship onto the reef" and that Captain Coyne should have been warned about this supposed current. J.A. 159. The court rejected this explanation because petitioners failed to show that their post-hoc studies of the currents in the area could have been reduced to a usable format and, more important, because petitioners failed to show that Captain Coyne would have referred to such data had it been available. Instead, the court found that Captain Coyne's decision to turn "was made in haste without due consideration of several other pieces of information which should have caused him to reject the turn," such as the navigational charts, fixed plots that should have been taken of the vessel's position, or consultations with his other officers. J.A. 160.

pertinent information that was available to him." J.A. 160.

The Bifurcation Order

Petitioners brought suit against respondents, alleging claims for breach of contract warranties, negligence, and products liability. Respondent Sofec, Inc. manufactured the single point mooring system, which was owned and operated by the other respondents. Respondent HIRI subsequently filed a third-party complaint against the third-party respondents here, who manufactured and distributed components of the chafe chain used in the single point mooring system.

The principal portion of the damages claimed by petitioners stemmed from the grounding of the EXXON HOUSTON herself, as the damages incurred from the oil cleanup were relatively minor. J.A. 71. The central difficulty in structuring the trial proceedings in this case was to determine the issue of causation among the multiple parties with respect to the harm that the vessel suffered when it was stranded. Respondents and the third-party respondents vigorously disputed among themselves the cause of the initial breakout of the vessel from its mooring. J.A. 63. Petitioners and all of the various respondents also disputed the actual and proximate cause of the vessel's stranding. J.A. 62-69. Observing that petitioners bore "the burden of proving that the breakout of the vessel from her mooring was the proximate cause of the grounding," J.A. 66, the trial court found itself unable to resolve these issues on summary judgment because the critical factual issues were legitimately in dispute, J.A. 69, 71.

More than two years after the complaint was filed, the trial court sought to simplify the imminent trial proceedings by granting respondents' motion to bifurcate the issue of causation

as between the breakout and the stranding of the vessel. J.A. 71-74. The trial court noted its authority to exercise "broad discretion to order separate trials pursuant to Rule 42(b) of the Federal Rules of Civil Procedure when a separate trial will further convenience, avoid prejudice or be conducive to expedition and economy." J.A. 72 (quotation omitted).

The court considered those factors and determined that they supported bifurcation on the causation issue. It acknowledged respondents' observations that "bifurcation could obviate the need for extensive discovery, trial preparation, and weeks of trial if the court first determines the cause or comparative causes of the grounding, excluding the cause of the breakout," which would involve complicated matters of proof. J.A. 71. The court also noted that Phase One of the trial would address 80% of petitioners' damage claims, which supported respondents' view that "a separate trial offers the probability of settlement after the conclusion of the first phase." J.A. 72. Moreover, the court concluded that if it were to determine "that the navigation of the EXXON HOUSTON was the proximate cause of its grounding, then it would be unnecessary for the court to resolve the issue of 'comparative fault'" or assess damages. J.A. 72 (citation omitted).

The court explained, however, that the ascertainment of comparative fault would be very much at issue in Phase One of the trial if the facts supported this resolution: "On the other hand, if the court does not find that the navigation of the vessel was the superseding cause of the grounding, the court can still determine in the first phase of a bifurcated trial the comparative fault (cause) of the grounding as between the breakout and the subsequent navigation of the vessel." J.A. 73. Finally, the court weighed and resolved the competing considerations that were raised by the motion to bifurcate:

> The court is well aware of the possibility that the issue of causation with respect to the breakout may still require a second phase of trial, perhaps before a jury. The court, however, is in the best position to determine whether bifurcation *in this case* promotes judicial economy. The court finds that it does.

J.A. 74 (emphasis in original).[5] Judge Fong thus ordered the parties initially to try "the issue of causation with respect to the EXXON HOUSTON's grounding, but not including the issue of causation with respect to the breakout itself." J.A. 74.

The Trial Court Judgment

The purposes that the trial court believed would be served by the bifurcation order were vindicated by the trial proceedings themselves. The causation issues addressed in Phase One of the trial alone required three weeks of courtroom time. After a bench trial of those issues, the court entered judgment for respondents, concluding that they "are not legally responsible for the stranding of the EXXON HOUSTON." J.A. 175. The court based this conclusion on the findings of fact as related above, and on the following determinations.

First, the court noted the Court's venerable holding in *THE LOUISIANA*, 70 U.S. (3 Wall.) 164 (1865), that when a moving vessel strikes a charted reef, it is presumed that the vessel is at fault. *Id.* This presumption of fault suffices to make out a *prima facie* case of negligence against the moving vessel. The presumption is "universally described as strong, and as one that places a heavy burden on the moving ship to overcome." J.A. 167 (quotations omitted). It can be overcome only by proving, for instance, that the vessel acted with reasonable care or that the stranding was inevitable. Yet the trial court found that petitioners simply failed to carry their burden of proof on either point. It thus concluded that petitioners were negligent and that their negligence was a proximate cause of the stranding. J.A. 167.

Second, the court recognized that "admiralty law further presumes that when a vessel violates a statutory rule meant to prevent stranding, the violation was a proximate cause of the stranding." J.A. 168; *see THE PENNSYLVANIA*, 86 U.S. (19 Wall.) 125 (1873). Captain Coyne was found to have violated mandatory federal directives both by failing to have the vessel's

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[5] At that juncture, a jury trial might have been necessary on various contract claims that Sofec had asserted against HIRI, which did not fall within federal admiralty jurisdiction. Sofec has since dismissed those claims, leaving no matters that would require resolution by a jury.

position plotted on a navigational chart between 1830 and 2004 and by manning the bridge alone between 1948 and 2000. *See* 33 C.F.R. § 164.11(a) & (c) (1995). Because petitioners again failed to rebut the presumption of negligence imposed by this rule, the court found that petitioners' violations were a proximate cause of the stranding of the vessel. J.A. 169.

Third, the court went on to consider in more detail whether Captain Coyne's conduct was negligent without regard to the application of the foregoing rules. It found that he acted "negligently, unreasonably and in violation of the maritime industry standards" in numerous ways: (1) by not deploying sufficient chain to anchor the ship at 1747; (2) by not requesting assistance from the Coast Guard or others; (3) by not attempting to anchor the ship again after 1747; (4) by not continuing to back the ship after 1830 until it reached a safe distance from the shore; (5) by choosing to linger in the vicinity of the shore, only about one-half mile from the actual grounding line. J.A. 170-71. In addition, Captain Coyne's failure to plot fixes of the vessel's position between 1830 and 2004, which would have avoided any danger of stranding, "was grossly and extraordinarily negligent and in violation of the maritime industry standards." J.A. 171.

Captain Coyne's final turn, which led immediately to the grounding of the vessel, was found to be "grossly and extraordinarily negligent and in violation of the maritime industry standards because he commenced it without knowing the vessel's position." J.A. 171. The decision to turn the ship toward the coast was found to have been made "independently of the breakout," and this decision and the attempt to make the turn were each found to be "not a foreseeable consequence of the breakout." J.A. 175. Once again, the trial court found that Captain Coyne could have avoided any danger of stranding by simply backing out to sea or turning the other way. J.A. 171.

Fourth, and of extreme significance here, the court made an independently dispositive determination that the causal chain between the initial breakout and the ultimate stranding was broken during the intervening period. In particular, the court found that by 1830, the EXXON HOUSTON had reached a position of safety, which vitiated the causal forces that had previously operated on the vessel after it came loose from its

mooring.[6] "The EXXON HOUSTON had reached a safe position and only the gross negligence of its master put it into further danger." J.A. 174. The court later reiterated the same point: "By 1830, the Exxon Houston was heading out to sea and in no further danger of stranding. Only the grossly negligent actions of its master endangered the vessel further." J.A. 175.[7]

For all of these reasons, the court concluded that petitioners did not carry their burden of proving that the initial breakout proximately caused the stranding of the vessel. J.A. 162, 172-76. It based this conclusion on careful consideration of the factors laid out in section 442 of the *Restatement (Second) of Torts*, which define when "an intervening force is a superseding cause of harm to another." J.A. 172-73. The court found, in particular, that many features of Captain Coyne's conduct were "highly extraordinary" and "grossly negligent," though they resulted from "voluntary, unforced" decisions, J.A. 174-75, made not in any extreme crisis, but "calmly, deliberately and without the pressure of an imminent peril," J.A. 170. In the end, his actions were judged to be "the sole proximate cause of the stranding of the EXXON HOUSTON." J.A. 173.

Judge Fong summed up his determinations as follows: "Captain Coyne inexplicably chose to loiter in a dangerous area without fixing his position. Then, while overly concerned by an injury to a crew member, he drove the ship onto a charted reef. *It would be manifestly unjust to hold anyone legally responsible for the consequences of these acts other than Captain Coyne and his employer, Exxon.*" J.A. 175-76 (emphasis added).

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[6] The court had confronted the same potentially dispositive issue on motion for summary judgment, but was unable to resolve it in that posture, for whether the vessel had reached a position of safety, and whether Captain Coyne had been negligent, were both disputed facts that could only be resolved after trial. J.A. 68-71.

[7] The court also found that petitioners had failed to establish any post-breakout breaches of the "safe berth" clause or warranty contained in their contract with respondents HIRI, who owned and operated the single point mooring system. J.A. 162-66.

The Court of Appeals Decision

The Court of Appeals unanimously affirmed. It began its analysis by focusing on the issue of proximate cause, including the subsidiary principle of superseding cause, and discerned some confusion among the courts of appeals on the continued applicability of these concepts under the comparative fault rule adopted in *United States v. Reliable Transfer Co.*, 421 U.S. 397 (1975).[8] After considering the case law, the court reaffirmed its previous ruling that "superseding cause may act to cut off liability for antecedent acts of negligence in admiralty cases where the superseding cause is the result of extraordinary negligence. We therefore hold that the district court did not 'disobey' *Reliable Transfer* in employing the doctrine of superseding cause in this case." J.A. 223.

The Court of Appeals then easily dispatched petitioners' claim that the District Court had improperly bifurcated the proceedings, noting that trial courts enjoy broad discretion under Rule 42(b), and concluding that Judge Fong did not abuse his discretion. Legally, the bifurcation was unexceptionable, for the District Court had correctly determined that if it found "the injured party to be the superseding or *sole* proximate cause of the damage complained of, it cannot recover from a party whose actions or omissions are deemed to be causes in fact, but not legal causes of the damage, regardless of whether that party's liability is premised on negligence or strict liability." J.A. 225-26 (emphasis in original). Moreover, the court soundly exercised its discretion, for bifurcation of the trial was "expeditious and appropriate" and did not prejudice Exxon. J.A. 226.

Finally, the Court of Appeals turned to the trial court's findings that Captain Coyne had acted "with extraordinary

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[8] In particular, the Ninth Circuit found inconsistency between the Eleventh Circuit's decision in *Hercules, Inc. v. Stevens Shipping Co.*, 765 F.2d 1069 (11th Cir. 1985), which apparently is the only decision to reject the doctrine of superseding cause, and later decisions by the Fifth, Eighth, and Ninth Circuits, which hold that the doctrine of proximate cause, including the subsidiary principle of superseding cause, retains its full vitality in maritime tort cases. *See* J.A. 219-23.

negligence" and that those actions "constituted a superseding cause of the ship's loss." J.A. 227-28. On each point, the Court of Appeals approved the trial court's determinations, relying heavily on its factual findings, which were found to be "well supported by the record" and thus were upheld in their entirety. J.A. 233; *see generally* J.A. 226-33.

SUMMARY OF ARGUMENT

Admiralty courts should apply the same principles of proximate causation for maritime torts that courts apply in the common law of torts. The doctrine of proximate cause has been elaborately developed and refined over centuries of adjudication. These foundational principles for ascertaining legal responsibility for wrongs done to another are embodied in the settled case law as well as in the leading authorities on tort law. No sound reasons have been advanced for departing from these well-settled principles in cases involving maritime torts.

The established doctrine of proximate cause in the law of torts includes the principle of superseding cause. Indeed, this principle is a bedrock tenet of causation analysis in circumstances where different causal forces operate successively rather than concomitantly. In particular, where a court determines that a subsequent causal force is an extraordinary intervening event that is not a normal consequence of previous causal forces, the accepted principle of superseding cause holds that the subsequent causal force constitutes the proximate cause of any harm that may have occurred. Any other approach would represent a significant departure from the established doctrine of "proximate" cause.

These tort-law concepts are wholly consistent with principles of comparative fault. Most modern regimes of tort law have adopted comparative negligence as the basic rule for allocating liability, and yet they continue faithfully to apply the principle of superseding cause in their analysis of proximate cause both in negligence cases and in products liability cases. For these reasons, the principle of superseding cause is consistent with this Court's decision in *United States v. Reliable Transfer Co.*, 421 U.S. 397 (1975), which adopted the rule of comparative fault in maritime tort cases. The plain consistency of traditional causation principles with the

comparative fault rule is shown by the Court's decision in *Union Oil Co. of Cal. v. THE SAN JACINTO*, 409 U.S. 140 (1972), which must be overruled for petitioners to prevail.

The accepted doctrine of proximate causation reflects the straightforward and practical approach favored in federal admiralty law. This is primarily so because this doctrine can aid in streamlining complex causal chains of events that would multiply the practical difficulties of trying maritime tort cases involving multiple claims and multiple parties. Consistency between the common law of torts and federal admiralty law governing maritime torts is also important to discourage forum shopping in those cases where federal admiralty jurisdiction may be uncertain or disputed.

In addition, the Court has stressed the need to maintain consistency between American admiralty law and the legal principles applied by other leading maritime nations. This is important to discourage transoceanic forum shopping, which is detrimental to maritime commerce and to the just and orderly resolution of civil disputes that arise with regularity in international waters. Consistent treatment of maritime tort claims between these bodies of law is best facilitated by adhering to settled principles of proximate causation, as exemplified by a strikingly similar British decision, *S.S. SINGLETON ABBEY v. S.S. PALUDINA* [1927] App. Cas. 16.

The lower courts correctly applied the doctrine of proximate causation here. The trial court made two pivotal factual findings that are dispositive of petitioners' claims. First, the trial court found that after the vessel broke loose from its mooring, it ultimately reached a position of safety, at which point the causal forces stemming from the breakout were no longer any substantial factor in its subsequent movements. The circumstances obtaining at that juncture allowed calm deliberation and decisionmaking as to where to guide the vessel thenceforth. Second, the trial court found that Captain Coyne committed "extraordinary" negligence in his subsequent handling of the vessel, and that this extraordinary negligence was the sole proximate cause of her stranding. These factual findings are critical to proper disposition of the claims advanced in this case, and stand in sharp contrast to the skewed account of events conjured up in petitioners' brief.

Petitioners have also recast their tort claims, based on the same underlying events, as contract claims premised on express and implied warranties contained in their contract to deliver crude oil. For many of the reasons already stated, this Court should hold that the same causation principles apply to maritime contract claims, framed in terms of "foreseeability," as the courts apply in the common law of contracts. The foreseeability doctrine tends to reflect tort-like principles of proximate cause, but is more limited in scope. Application of this doctrine in this case affords no relief to petitioners, but is fully consistent with traditional concerns of admiralty law.

Finally, the real object of petitioners' recriminations is the District Court's ruling that bifurcated the trial in order to focus judicial resources on the dispositive issue of proximate causation. Petitioners repeatedly assert that the trial court's bifurcation order deprived them of due process of law. Yet they did not frame this issue as one of their questions presented, and therefore they cannot seek reversal on this ground.

Moreover, any such claim is frivolous. It is standard procedure in tort cases involving multiple parties to conserve the resources of the court and litigants alike by trying one or more potentially dispositive issues in the first instance, and postponing resolution of other issues, if necessary at all, until a later stage. In admiralty cases, as in other cases, trial courts should enjoy broad discretion to devise what they judge to be orderly and efficient processes for determining the factual and legal issues. The results of this trial fully vindicate the purposes that the late Judge Fong concluded would be served by bifurcation here.

ARGUMENT

I. ADMIRALTY COURTS SHOULD APPLY THE SAME PRINCIPLES OF PROXIMATE CAUSE FOR MARITIME TORTS AS THE COURTS APPLY IN THE COMMON LAW OF TORTS.

The essence of the decisions below, and of our position before this Court, is that maritime torts are no different from land-based torts in terms of the legal principles that should govern such basic issues as breach of duty, causation, and

damages. In particular, the doctrine of proximate cause, which courts have refined over many decades of jurisprudential development, should apply to maritime torts for the same reasons of fairness and efficiency that have been found to justify its application in all other kinds of tort cases. This general principle of consistency between federal admiralty law and the common law also discourages forum shopping in cases where federal admiralty jurisdiction is uncertain or disputed.

A. The Doctrine of Proximate Cause in Tort Law Includes the Principle of Superseding Cause

The doctrine of proximate cause is firmly established in the common law of torts. It is a critical tool for avoiding endless squabbles about how far along the truly infinite chain of causal forces courts should extend their inquiries in order to fix legal responsibility for harm suffered by complaining parties. *See, e.g.*, W. Page Keeton, *Prosser and Keeton on the Law of Torts* § 44, at 302 (5th ed. 1984) ("In the effort to hold the defendant's liability within some reasonable bounds, the courts have been compelled, out of sheer necessity and in default of anything better, to fall back upon" the doctrine of proximate cause, including "intervening cause.").

The principal features of proximate causation are set forth in the *Restatement (Second) of Torts*, and were correctly relied upon by the courts below. *See* J.A. 172-76, 221 n.4, 230-33. For a party's conduct to constitute the legal cause of any harm, that conduct must be "a substantial factor in bringing about the harm" and must not be subject to any rule of law that relieves that party "from liability because of the manner in which his negligence has resulted in the harm." *Restatement (Second) of Torts* § 431 (1965). One of the rules that relieves a party from liability for its negligence is the doctrine of superseding cause. A "superseding cause" is defined as any "intervening force" that "actively operates in producing harm" to the complaining party "after the actor's negligent act or omission has been committed," at least where certain other considerations are present. *Id.* §§ 440 & 441.

The considerations that suffice to transform an intervening force into a superseding cause, which relieves the defendant of liability, are set out in the *Restatement*, as follows:

> (a) the fact that its intervention brings about harm different in kind from that which would otherwise have resulted from the actor's negligence;
>
> (b) the fact that its operation or the consequences thereof appear after the event to be extraordinary rather than normal in view of the circumstances existing at the time of its operation;
>
> (c) the fact that the intervening force is operating independently of any situation created by the actor's negligence, or, on the other hand, is or is not a normal result of such a situation;
>
> (d) the fact that the operation of the intervening force is due to a third person's act or his failure to act;
>
> (e) the fact that the intervening force is due to an act of a third person which is wrongful toward the other and as such subjects the third person to liability to him;
>
> (f) the degree of culpability of a wrongful act of a third person which sets the intervening force in motion.

Id. at § 442.[9] Consistent with this itemization of pertinent considerations, courts continue to apply the principle of superseding cause in making determinations of liability for all manner of tort claims.[10]

Dissenting from the widespread acceptance of these principles, petitioners' amicus quotes a passage from Dean Prosser that, taken out of context, seems critical of this doctrine: "It must be conceded that 'intervening cause' is a highly unsatisfactory term, since we are dealing with problems of responsibility, and not physics." *See* Maritime Law

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[9] As will be discussed in more detail, *see* Section II, *infra*, the trial court painstakingly applied the factors set forth in section 442 of the *Restatement* in order to reach a correct determination of liability in this case. *See* J.A. 172-76.

[10] *See, e.g.*, *Peckham v. Continental Casualty Ins. Co.*, 895 F.2d 830, 838 (1st Cir. 1990); *Watters v. TSR, Inc.*, 904 F.2d 378, 383 (6th Cir. 1990); *Lone Star Indus., Inc. v. Mays Towing Co.*, 927 F.2d 1453, 1459-60 (8th Cir. 1991) (maritime tort); *Hunley v. Ace Maritime Corp.*, 927 F.2d 493, 497 (9th Cir. 1991) (maritime tort).

Association of the United States as *Amicus Curiae* in Support of Petitioners ("MLA Br.") 12 n.7. The complete passage, however, shows that this supposed criticism is merely linguistic, not conceptual, for it continues:

> [The term "intervening cause"] is used in default of a better, because it is useful in dealing with the type of case where a new and independent cause acts upon a situation once created by the defendant. In the most common usage it is meant to be understood in a very general sense that distinguishes intervening causes from concurring causes of either natural or human origin, which come into active operation at a later time to change a situation resulting from the defendant's conduct.

Prosser and Keaton, *supra*, § 44, at 302. The broader context of Dean Prosser's discussion demonstrates even more fully his agreement with the definitive position of the *Restatement* that the principles of superseding or intervening cause represent an established doctrine of tort law that is useful in settling legal responsibility for the harms that occur in certain kinds of factual situations. *See id.* at 301-19.

B. The Doctrine of Proximate Cause Is Consistent with Principles of Comparative Fault

The gist of petitioners' dissatisfaction with the law as framed by the lower courts in this case is their contention that the legal principle of superseding cause is wholly inconsistent with comparative fault. *See* Pet. Br. 23-29. Yet because this principle is an accepted feature in legal analysis of proximate causation, and since that analysis occurs routinely in tort cases governed by modern principles of comparative negligence, petitioners' contention is plainly wrong.[11]

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[11] In the court below, petitioners sought to analogize the doctrine of superseding cause to the now-discredited doctrine of "last clear chance," but this distortion was recognized plainly as such and roundly rejected. *See* note 12, *infra*. In this Court, they have shifted ground and now seek to analogize superseding cause to the doctrine of contributory negligence, *see* Pet. Br. 21 & 32, which again misconceives basic principles of tort law. *Compare, e.g.*, *Restatement (Second) of Torts*, *supra*, ch. 16 (discussing causation, including superseding cause) *with id.* ch. 17 (discussing contributory negligence).

The principle of imposing liability in proportion to the amount of harm caused by each party's conduct was not favored in an earlier age where the trial of cases was marked by simpler legal standards and methods of proof were perhaps more primitive and less exacting. In recent decades, however, the common law has generally embraced comparative fault as the accepted rule in apportioning liability for tortious conduct. *See Prosser and Keeton*, *supra*, § 67, at 479 ("comparative fault apportionment of damages is veritably sweeping the land"). With the adoption of comparative fault, many of the doctrines that had grown up under the prior tort-law regime have been rendered obsolete. The harsh corrective rule of contributory negligence as a complete bar to recovery, for example, along with such counter-correctives as "last clear chance," have not been sustained in the new regime of modern tort law based on principles of comparative fault. *See id.* at 477-78.[12]

At the same time these developments have occurred, however, courts have not diminished their allegiance to the traditional principles of causation analysis, including proximate cause. The doctrine of proximate cause remains critical in fixing legal responsibility for harm even under a tort-law regime that has embraced the apportionment of damages among

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[12] In the decision below, the Ninth Circuit correctly distinguished the doctrine of superseding cause, which remains useful and valid in determining proximate cause, from "last clear chance," which has been discarded under a tort regime of comparative negligence. "While Exxon has analogized superseding cause doctrine to last clear chance, that argument fails . . . . HIRI was not absolved of fault because Exxon had the 'last clear chance' to avoid danger, but because the district court found that Exxon's independent and extraordinarily negligent actions were the sole legal cause of the stranding." J.A. 232 n.7. *Compare* 1 Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 5-3 (1994) (approving causation doctrines, including superseding cause) *with id.* § 5-12 (disapproving last clear chance) *and id.* § 5-13 (disapproving contributory negligence); *see also* note 11, *supra*.

multiple parties. *See, e.g., Connors v. Gasbarro*, 448 A.2d 756, 761 (R.I. 1982) (where negligence of one party was sole proximate cause of collision, comparative negligence does not apply); *Kroon v. Beech Aircraft Corp.*, 628 F.2d 891, 893 (5th Cir. 1980) (same; applying Florida law). And it continues to be established law that the doctrine of proximate cause includes the subsidiary principle of superseding cause. *See Restatement (Second) of Torts, supra*, § 442; *Prosser and Keeton, supra*, § 44; *see also, e.g., Carlotta v. Warner*, 601 F. Supp. 749, 751 (E.D. Ky. 1985) (superseding cause obviates comparison of parties' negligence; applying Kentucky law); *Ellertson v. Dansie*, 576 P.2d 867, 869 (Utah 1978) (where plaintiff's conduct was superseding cause, comparative negligence does not apply).

The same approach also governs tort claims brought under the modern doctrine of strict products liability. Here too, the doctrine of proximate cause continues to apply in full measure, for products liability law simply relieves the complaining party of the onus of proving negligence, but leaves in place all other elements of proof. *See, e.g., Prosser and Keeton, supra*, § 98. Thus, the plaintiff in a products liability case must still prove that the improper design or manufacture of a product was the proximate cause of any alleged harm. *See id.* § 102 at 710.

In such cases, moreover, the principle of superseding cause remains fully applicable. As Dean Prosser has summarized: "virtually all courts have seemingly agreed that the conduct or misconduct of another, including an intermediate seller, the claimant, or anyone else, may be of such a nature or kind as to constitute a superseding cause." *Prosser and Keeton, supra*, § 102, at 710; *see, e.g., R.H. Macy & Co. v. Otis Elevator Co.*, 554 N.E.2d 1313, 1317 (Oh. 1990) (superseding cause applies to strict products liability claims); *Buckley v. Bell*, 703 P.2d 1089, 1091-95 (Wyo. 1985) (same); *In re Related Asbestos Cases*, 543 F. Supp. 1142, 1150 (N.D. Cal. 1982) (same).

C. The Doctrine of Proximate Cause Is Consistent with the Court's Decision in *Reliable Transfer*

Petitioners contend that the doctrine of proximate cause is inconsistent with the Court's holding in *Reliable Transfer* that "when two or more parties have contributed by their fault to

cause property damage in a maritime collision or stranding, liability for such damages is to be allocated among the parties proportionately to the comparative degree of their fault." *United States v. Reliable Transfer Co.*, 421 U.S. 397, 411 (1975). Because this contention depends upon the premise that the principles of proximate cause, including superseding cause, are not consistent with comparative fault, it is squarely refuted by the preceding section. But a fuller understanding of *Reliable Transfer* confirms the same point.[13]

In *Reliable Transfer*, the Court did not have occasion to consider any issue of superseding cause. In that case, a vessel ran aground on a sand bar outside New York Harbor. The vessel's owner brought suit against the United States, alleging that the Coast Guard had failed to maintain the light that marked a breakwater near the spot where the vessel was stranded. The trial court found that the stranding was caused 25% by the Coast Guard's failure to maintain the breakwater light and 75% by the fault of the vessel's captain, who was negligent in setting his course based on little more than guesswork. 421 U.S. at 399. The case was thus legitimately one of multiple causation, where the alleged fault of each party was found as a factual matter to have operated concomitantly to cause the stranding.[14]

The principal issue confronted by the Court was whether liability should be allocated evenly between the two parties, without regard to the trial court's finding that they had been responsible in different proportions for causing the resulting harm. More than a century before, the Court had adopted the "divided damages" rule, which "was an ancient form of rough justice, a means of apportioning damages where it was difficult to measure which party was more at fault." 421 U.S. at 402, 403. Yet the Court recognized that with the passage of time the

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[13] Petitioners cite *City of Milwaukee v. Cement Div., Nat'l Gypsum Co.*, 115 S. Ct. 2091, 2097 (1995), and *McDermott, Inc. v. AmClyde*, 114 S. Ct. 1461, 1465 (1994), as recent reaffirmations of *Reliable Transfer*. Pet. Br. 24-25. Neither decision, however, sheds any light on the issues raised in this case.

[14] Petitioners' amicus concedes that *Reliable Transfer* did not address any issues of superseding cause. MLA Br. 15 n.10.

United States had come to be "virtually alone among the world's major maritime nations" in not adopting the more modern rule of proportional fault, *id.* at 403, and that the older rule "produces palpably unfair results" in many cases, *id.* at 405. Therefore, the Court overruled its prior decisions endorsing the "divided damages" rule and adopted the rule of comparative fault to govern maritime tort claims. *Id.* at 411.

It is apparent that the Court adopted the comparative fault rule under federal admiralty law for essentially the same reasons that the common law of torts was embracing the doctrine of comparative negligence during the same period. The old regime had "continued to prevail in this country by sheer inertia rather than by reason of any intrinsic merit. The reasons that originally led to the Court's adoption of the rule have long since disappeared. The rule has been repeatedly criticized" for its inequity. *Id.* at 410-11. Similar concerns prompted general adoption of comparative negligence.

The consequences of *Reliable Transfer* have also been the same as those that flowed from the adoption of comparative negligence in tort law. Several odd doctrines peculiar to admiralty law, which had grown up in reaction to the problems of the "divided damages" rule, became immediately obsolete. "*Reliable Transfer* and the doctrine of comparative negligence also have simplified the law of collision, sounding the death knell for a number of doctrines that are no longer needed," such as the "Major-Minor Fault Rule" and the doctrine of inscrutable fault. 2 Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 14-4, at 271 (1994). By the same token, some of the same doctrines that had been discarded in the common law of torts were similarly irrelevant to a maritime tort regime based on comparative fault, such as "last clear chance" and contributory negligence. *See*, 1 Schoenbaum, *supra*, §§ 5-12 & 5-13.[15]

By contrast, as the one leading authority on admiralty law to address the issue has concluded, "the superseding cause doctrine can be reconciled with comparative negligence.

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[15] The defense of contributory negligence had been rejected in admiralty law much earlier, *see THE MAX MORRIS v. Curry*, 137 U.S. 1 (1890), but the doctrine of "last clear chance" had continued to be applied up until the Court's decision in *Reliable Transfer*.

Superseding cause operates to cut off the liability of an admittedly negligent defendant, and there is properly no apportionment of comparative fault where there is an absence of proximate causation." *Id.* at § 5-3, at 166. Or, as Professor Schoenbaum restates the same point: "If the court can apply the doctrine of superseding cause to apportion injuries to separate causes based on the evidence, there is no need for the doctrine of comparative negligence" to come into play. *Id.* at 165 n.16 (citing *Desmond v. Holland Am. Cruises*, 1981 A.M.C. 211 (S.D.N.Y. 1981), as a case in which the trial court properly applied proximate cause analysis to find that a superseding cause precluded defendant's liability).

Indeed, the clear consistency between causation doctrines and the comparative fault rule is demonstrated by the Court's decision in *Union Oil Co. of Cal. v. THE SAN JACINTO*, 409 U.S. 140 (1972) (Rehnquist, J.). The Court granted certiorari in *Union Oil* to reconsider the same "divided damages" rule that it eventually overruled three years later in *Reliable Transfer*. 409 U.S. at 141. Before addressing that important issue, however, the Court held that it was first necessary to deal with a potentially dispositive threshold issue. *That threshold issue, which ultimately did prove to be dispositive, was the issue of proximate cause.*

In *Union Oil*, a barge under tow collided with a tanker. In the ensuing lawsuit, the trial court determined that though both parties may have been negligent, the tug and barge had been the sole proximate cause of the collision. *See Union Oil Co. of Cal. v. THE TUGBOAT SAN JACINTO*, 304 F. Supp. 519 (D. Ore. 1969). As in the case presently before the Court, the trial court determined as a factual matter that any negligence by the tanker was "not a contributing cause of the collision," and that the *in extremis* rule did not apply. *Id.* at 522. The Ninth Circuit reversed, holding that because the tanker was also at fault, the two parties must each be held liable for half the total damages under the "divided damages" rule, without regard to any finding as to proximate causation. *See* 409 U.S. at 143-44.

In this posture, the Supreme Court granted review. After recounting the background facts of the collision and the statutory rules of fault that governed the parties' conduct, the Court found itself in agreement with the trial court's

determination that any fault ascribed to the tanker "did not proximately contribute to the collision." *Id.* at 146 (quotations omitted). It then held that the causation issue is logically antecedent to the apportionment of damages, and thus was dispositive of the case. *Id.* The Court therefore reversed and reinstated the trial judgment, without proceeding on to consider whether it should apply the comparative fault rule.[16]

The Court's holding in *Union Oil*, though predating the *Reliable Transfer* decision, is controlling here and completely defeats petitioners' contentions. Here, as in *Union Oil*, the trial court found as a factual matter that though both parties may have been negligent or somehow at fault, only one party was the proximate cause of the harm at issue. Petitioners here claim that the trial court erred by making this threshold determination and by not continuing on to apply the comparative fault rule adopted in *Reliable Transfer*. Yet in *Union Oil* the Court granted review explicitly to consider whether to adopt this same rule, and ended up holding that proximate cause was properly a threshold issue that must be determined before going on to apportion damages under the comparative fault rule. If that was so in *Union Oil*, it must be so in this case also, unless the Court's decision in *Union Oil* is now to be overruled. Petitioners have made no persuasive case to justify this step, however, and in fact sound principles of tort law support the logic of the Court's holding there.[17]

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[16] Lower courts have likewise held that to include in a comparative fault determination an element of negligence found not to constitute a contributing cause of the harm is a mistake of law. *See, e.g., Hellenic Lines, Ltd. v. Prudential Lines, Inc.*, 813 F.2d 634, 638 (4th Cir. 1987).

[17] Petitioners' amicus disagrees with petitioners about the continuing validity of the doctrine of superseding cause. *See* MLA Br. 9, 15-16. Yet amicus' view of the proper approach to resolving such cases, *see id.* at 15-16, is simply inconsistent with the Court's disposition in *Union Oil*. In addition, the clear consistency of causation doctrine and the comparative fault rule adopted in *Reliable Transfer* is also reflected in the Draft Maritime Comparative Responsibility Act with Comments, which has been proposed in Congress and was approved by petitioners' amicus. *See* 2 *Benedict*

D. The Doctrine of Proximate Cause Is Consistent with Principles of Admiralty Law Applied by the World's Leading Maritime Nations

In *Reliable Transfer*, the Court decided to jettison the "divided damages" rule in part because continued adherence to that rule had put the United States out of step with Great Britain and the other leading maritime nations. Indeed, the Court noted that Great Britain and many other countries follow the Brussels Collision Liability Convention of 1910, which provides for apportionment of damages on the basis of the degree of fault caused by the various parties. 421 U.S. at 403-04 & n.7. The relative isolation of the United States in adhering to the outmoded "divided damages" rule was deemed to be of great concern because the Court recognized that this not only cast doubt upon the wisdom of its prior position but also "encourages transoceanic forum shopping." *Id.* at 404. Such incentives to forum shopping are undesirable because they are detrimental to the just and orderly resolution of civil disputes that arise with recurring frequency in international waters.[18] These same problems would arise here, however, if the Court were to abrogate or limit its consideration of the issue of

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on Admiralty § 7, at 1-28.1 n.5 (F. Wiswall, ed.) (7th rev. ed. 1995). The initial section of this draft legislation, which would codify the comparative fault rule, states that "[l]egal requirements of causal relation apply both to fault as the basis for liability and to contributory fault." *Id.* The comments are more elaborate: "For the conduct stigmatized as fault to have any effect under the provisions of this Act it must have had an adequate causal relation to the claimant's damage. *This includes the rules of both cause in fact and proximate cause.*" *Id.* at 1-33 (emphasis added).

[18] For example, one account of the problems that were alleviated by the Brussels Convention describes a maritime collision in which the parties brought suit in England, Belgium, and Holland to take advantage of the distinct rules of recovery that had prevailed in those jurisdictions. *See* Alfred Huger, *The Proportional Damage Rule in Collisions at Sea*, 13 Cornell L.Q. 531, 531 (1928).

proximate cause in maritime tort cases.[19]

The Brussels Convention itself is wholly consistent with traditional causation doctrine in fixing responsibility for harms that occur on the high seas. Article 3 of the Convention states that if a collision "*is caused by* the fault of one of the vessels, liability to make good the damages shall attach to the one which has committed the fault." *See* 6 *Benedict on Admiralty*, Doc. 3-2, at 3-11 (F. Wiswall, ed.) (7th rev. ed. 1995) (emphasis added). From the perspective of this understanding of "fault" as grounded in causation, Article 4 then states the "proportional fault" rule adopted in *Reliable Transfer*. Finally, Article 13, which applies the same provisions to noncollision cases (such as this one), reflects the same causation approach:

> This Convention shall extend to the making good of damages *which a vessel has caused to* another vessel or to *persons or things on board either vessel, either by the execution or nonexecution of a manoeuvre or by the nonobservance of the regulations, even if no collision has actually taken place*.

Id. at 3-14 (emphasis added).

It is not surprising that the Brussels Convention, which is followed by "the world's major maritime nations," *Reliable Transfer*, 421 U.S. at 403, incorporates the same causation principles developed over many years by courts in determining responsibility for torts that occur in other contexts. To suggest, as petitioners do, that mere involvement in the events that culminate in allegations of harm suffices to require a party to bear partial legal responsibility for any such harm -- regardless of whether that party's actions can be found as a legal matter to have actually *caused* that harm -- is simply too facile.

Moreover, the British courts apply the same causation principles to maritime torts that are applicable to terrestrial torts. Significantly, this means that British maritime decisions

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[19] Petitioners' amicus touches on the importance of "harmony and uniformity" in the international relations of American maritime law, MLA Br. 14-15 (citing *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 150 (1920)), but never suggests or shows that its position is more consistent with such uniformity than is respondents' position.

have long embraced the doctrine of proximate cause, including the established subsidiary causation principle of "*novus actus interveniens*." Two important cases illustrate this approach.

In *THE CITY OF LINCOLN*, 15 P.D. 15 (C.A. 1889), a case decided by the Court of Appeal prior to Great Britain's adoption of the Brussels Convention, a steamer by that name collided with another ship. In the collision, a large portion of the other ship was cut off, which caused its steering compass, log glass, and various charts to be lost. The master of the truncated ship sought to navigate her to port, but was unable to calculate the distances properly in the absence of the ship's log and ultimately stranded the vessel. The owners of the stranded vessel brought suit against the owners of the steamer, which was acknowledged to have been at fault for the collision, for the damages sustained by the stranded vessel.

A unanimous court held that the defendants were liable for the stranding because it resulted directly from the consequences of the collision. Lord Esher recognized that "there may be intermediate circumstances in a case which prevent the ultimate damage from being the direct result of the defendants' act," but concluded that on these facts "the ultimate loss of the ship was caused by the captain being deprived of the means of finding out where his ship was, which deprivation was the direct result of the wrongful act of the defendants." 15 P.D. at 17. Judge Lindley agreed, concluding that because the captain's subsequent conduct was reasonable and not negligent, this "reasonable human conduct" is "such a consequence as in the ordinary course of things would flow from the act." *Id.* at 18. Judge Lopes also concurred on the basis that no "intervening, independent moving cause" led the damaged ship to run aground, and thus the defendants were responsible "for all the natural consequences occasioned by their original misconduct." *Id.* at 19. On the other hand, he stated, "if the consequence had been caused by anything which those on board the [other ship], by the exercise of proper skill and care, could have prevented clearly that liability would not attach." *Id.* The various opinions thus recognized the principle of superseding cause, but held that it did not apply on the facts of that case.

By contrast, the House of Lords approved and carefully applied the doctrine of superseding cause in a later admiralty

case. *S.S. SINGLETON ABBEY v. S.S. PALUDINA*, [1927] App. Cas. 16. That decision came down well after Great Britain had adopted the principles of proportional fault embodied in the Brussels Convention, *see* Maritime Conventions Act, 1911, 1 & 1 Geo. 5, ch. 57, § 1, and in it the majority expressly distinguished *THE CITY OF LINCOLN* on its facts.

The case involved three ships moored to a quay in Valetta Harbor, Malta. A strong wind came up, which caused the PALUDINA to drag her anchors and make contact with the SINGLETON ABBEY. Both ships broke away from their moorings, and the SINGLETON ABBEY thereafter struck a third ship, the SARA, and cast her adrift also. The latter two ships then manouvered in the harbor under their own steam to keep away from the shore and were brought up heading to the wind. The PALUDINA was clear of both of the other ships at this time. Twenty minutes later, the SARA collided with the SINGLETON ABBEY, which caused the SARA to sink. [1927] App. Cas. at 16. The owners of the SINGLETON ABBEY sued the owners of the PALUDINA, which was found liable for the initial collisions. On appeal to the House of Lords, the PALUDINA was conceded to have been at fault in causing the initial collisions; the issue instead was whether it was liable for the final collision between the SINGLETON ABBEY and the SARA, or whether that collision was due to a *novus actus interveniens*. *Id.* at 22.

Lord Sumner, for the majority, concisely stated the controlling principles of law: "the plaintiffs must prove that the PALUDINA's negligence was the cause of [the final collision]. The injury must have been caused directly, though not necessarily solely, by that negligence. If the PALUDINA merely created the occasion upon which this injury was inflicted, they fail." *Id.* at 26. On the facts as previously stated, he concluded that the PALUDINA's negligence was not the proximate cause of the final collision, for the captain of the SINGLETON ABBEY had reached a position in which he acted as a "free agent," at which point he "could do as he chose and he did so, none the less that he had to decide and act quickly." *Id.* "My lords, the PALUDINA is not liable for mere negligence, but only for negligence causing damage. The SINGLETON ABBEY herself is the cause of the damage she has suffered, not merely if her captain's action brought it about negligently. She will be the

cause of that damage, if her captain, freely and as the direct consequence of his own decision, brought it about at all." *Id.* at 26-27.[20] He thus distinguished *THE CITY OF LINCOLN*, where the captain steered his vessel wrongly and stranded it "because his means of observation, the log, etc., had been carried away in the collision." *Id.* at 27.[21]

These decisions thus establish that British admiralty law adheres both to the rule of proportional fault in maritime tort cases and to the doctrine of proximate causation, including the subsidiary principle of superseding cause or *novus actus interveniens*. As will be shown in Section II, *infra*, the application of the causation rules adopted in the S.S. PALUDINA decision to the facts of this case reinforce respondents' position that the trial court's judgment is correct and should be affirmed. In Lord Sumner's words, subsequent to the breakout Captain Coyne had reached a position in which he acted as a "free agent," at which point he "could do as he chose and he did so, none the less that he had to decide and act quickly" (though Captain Coyne had considerably more time in which to set his course). *Id.* at 26. Respondents may have "created the occasion" for Captain Coyne's actions that caused the stranding of the EXXON HOUSTON, but in fact the stranding of the vessel

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[20] Lord Sumner also stated his conclusion in terms of *novus actus interveniens*: "[The captain's] action was his own. No part of it was a 'natural' consequence of the PALUDINA's action, except in a sense that would make negligence on his part also a 'natural' consequence. His action was wilful, and, though rapid, was deliberate. The PALUDINA's negligence did not make him take it. Cause and consequence in such a matter do not depend on the question, whether the first action, which intervenes, is excusable or not, but on the question whether it is new and independent or not." *Id.* at 28.

[21] Lord Blanesburgh, concurring with Lord Sumner, added that the handling of the SARA was also a *novus actus interveniens* between the PALUDINA's negligence and the sinking of the SARA, which broke the chain of causation. *Id.* at 36. The two dissenting Lords did not contest the validity of the doctrine of *novus actus interveniens*, but thought that it did not apply on the facts. *See id.* at 24 (Viscount Dunedin); *id.* at 32 (Lord Phillimore).

was due to petitioners' own "wilful" and "deliberate" actions, which constituted extraordinary negligence. *Id.* at 28. Respondents are "not liable for mere negligence, but only for negligence causing damage. The [EXXON HOUSTON] herself is the cause of the damage she has suffered," for the extraordinary negligence of "her captain, freely and as the direct consequence of his own decision, brought it about" that she was stranded. *Id.* at 26-27.

To maintain consistency with international maritime law, the Court should expressly state that the doctrine of proximate causation, including the subsidiary principle of superseding cause, is consistent with the rule of comparative fault.[22] The endorsement of any other approach to proximate causation in maritime tort cases would encourage the very "transoceanic forum shopping" that the Court deplored and sought to avoid in *Reliable Transfer*. 421 U.S. at 404.

E. The Doctrine of Proximate Cause Is Consistent with Traditional Concerns of Admiralty Law

Seeking to undermine the doctrine of proximate cause in maritime tort cases, petitioners quote the Court's admonition that "conceptual distinctions" accepted at common law may be "foreign to [the] traditions of simplicity and practicality" embedded in admiralty law. *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 631 (1959).

In *Kermarec*, the Court declined to incorporate into federal admiralty law the "distinctions which the common law draws between licensee and invitee." *Id.* at 630. The Court reached this conclusion, however, because it determined that these distinctions were uniquely "inherited from a culture deeply rooted to the land," and had "originated under a legal system in

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[22] Of course, there is nothing improper about this Court seeking to maintain consistency between federal admiralty law and the maritime law of other nations. In brushing aside this cavil in *Reliable Transfer*, the Court observed that "the Judiciary has traditionally taken the lead in formulating flexible and fair remedies in the law maritime, and Congress had largely left to this Court the responsibility for fashioning the controlling rules of admiralty law." 421 U.S. at 409 (quotations omitted).

which status depended almost entirely upon the nature of the individual's estate with respect to real property, a legal system in that respect entirely alien to the law of the sea." *Id.* at 630, 631-32. The Court also observed that these feudalistic distinctions posed such a "semantic morass" that the common law was moving "towards imposing on owners and occupiers a single duty of reasonable care in all the circumstances." *Id.* at 631 (quotations omitted). The Court thus declined to embrace such "inappropriate common-law concepts." *Id.* at 630.

The issue of whether American admiralty courts should continue to adhere to principles of proximate causation, however, is entirely different from the situation before the Court in *Kermarec*. The doctrine of proximate cause is not rooted in peculiar considerations that grew out of a "heritage of feudalism," and is not at all tied to a legal system built upon the primacy of real property. To the contrary, it is an established pillar of tort law, fully applicable to tort claims that have little or no connection with the ownership of property, such as negligence and products liability claims.

The consistency between the doctrine of superseding cause and the admiralty rule of comparative negligence has been fully and clearly discussed in a leading treatise on admiralty law. As Professor Schoenbaum has cogently explained:

> Another aspect of proximate causation is whether an intervening or superseding cause relieves the defendant of liability. In some cases the defendant may be at fault, but the plaintiff or a third party may have committed an act which supersedes, in terms of cause, the fault of the defendant. The doctrine of superseding cause is thus properly applied to preclude direct causation; otherwise, the court will apportion liability and damages according to comparative fault.
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> * * *
>
> The doctrine of superseding cause is thus applied where the defendant's negligence in fact substantially contributed to the plaintiff's injury, but the injury was actually brought about by a later cause of independent origin that was not foreseeable. It is properly applied in admiralty cases.

1 Schoenbaum, *supra*, § 5-3, at 165-66.[23]

In a footnote to this passage, Professor Schoenbaum also cites with approval the "thorough discussion" of this issue in a recent law review commentary. *See* Herman W.H. Lee, *Abandon Ship? The Need to Maintain a Consistency Between Causation in Admiralty and Causation in Tort*, 25 Creighton L. Rev. 1007 (1992). Petitioners' amicus cites the same commentary (though petitioners do not), *see* MLA Br. 16 n.11, though it squarely supports respondents' position for many of the reasons already explained above. The article concludes:

> The doctrine of superseding cause should not be abrogated because it serves to assist courts in keeping a defendant's liability within reasonable bounds against the innumerable possible causes which may intervene subsequent to the defendant's negligent act. Courts should adhere to [this approach] in future admiralty tort cases by maintaining the consistency between causation in admiralty and common law tort. A court holding otherwise would subject a defendant to greatly increased liability and also encourage overzealous plaintiffs to submerge the court with a tide of lawsuits.

Abandon Ship, *supra*, at 1041. These authorities thus persuasively conclude that proximate cause, including the subsidiary principle of superseding cause, is fully consistent with principles of federal admiralty law. *See also Union Oil*, 409 U.S. at 143-46.

Perhaps even more to the point, application of the settled doctrine of proximate causation simply cannot be avoided in

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[23] Petitioners quote a passage from Professors Gilmore and Black in an attempt to show that "the maritime court has been less ready than the shore courts to find that a subsequent wrongful act by one party breaks the chain of causation." Pet. Br. 23 n.19 (quoting Grant Gilmore & Charles Black, *The Law of Admiralty* § 7-5, at 494 (2d ed. 1975)). Petitioners neglect to mention, however, that this statement was made before the Court's decision in *Reliable Transfer*, which did away with outmoded doctrines of allocating damages that had influenced the maritime courts to strain in applying traditional causation principles.

any legal system that seeks to impose liability rationally and consistently on the basis of fault. As discussed in Section I.B, *supra*, the doctrine of proximate cause thus continues to be applied throughout the common law of torts -- both in negligence cases and in strict products liability cases -- to fix legal responsibility for harms. Any other approach would be incompatible with the foundations of Anglo-American law, whether maritime or otherwise. Indeed, to hold a defendant liable for harm actually caused by another's subsequent, intervening acts would be illogical and inequitable.[24]

The refashioning of proximate cause doctrines sought by petitioners here also would undermine the objective of maintaining consistency between the common law and federal admiralty law governing maritime torts, which is to be desired in the absence of strong reasons to the contrary. This consistency is important to discourage forum shopping in tort cases where federal admiralty jurisdiction may be uncertain or disputed, which are not infrequent even in this Court. *See, e.g., Sisson v. Ruby*, 497 U.S. 358 (1990); *Foremost Ins. Co. v. Richardson*, 457 U.S. 668 (1982); *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249 (1972).

Moreover, this case illustrates how a trial court's attention to proximate cause may allow it in some cases to take a simpler and more practical approach in adjudicating all the liability and damage issues raised among multiple parties. By bifurcating the trial here into two distinct phases, Judge Fong was able to defer intricate discovery and trial preparation on the issue of liability for the breakout, as well as on the damage issues, until the question of proximate cause was first resolved. The parties estimated that bifurcation could save them at least fifty days of depositions, amounting to more than $750,000 in expenses, on these issues, as well as reducing the amount of trial time by approximately 80%. J.A. 49. Even without bifurcation,

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[24] In this case, for example, Judge Fong powerfully captured this point by concluding that because petitioners' extraordinary negligence was the superseding and proximate cause of the vessel's stranding, *it would be "manifestly unjust to hold anyone legally responsible for the consequences of these acts other than [petitioners]."* J.A. 176 (emphasis added).

attention to this threshold issue may succeed in simplifying the disposition of many cases. *See, e.g., Union Oil*, 409 U.S. at 146 (holding that where one party is the sole proximate cause of any harm, the case is correctly resolved without determining issues of comparative fault).

In this case, the trial of the issues addressed in Phase One alone consumed three weeks of courtroom time. Had the court been obliged to conduct a single trial that addressed each of the various liability and damage issues involving all of the various parties -- which petitioners erroneously suggest it should have been required to do as a constitutional matter -- it would have been unable to effect any simple, practical resolution of the dispositive issues presented. The resulting judicial melee would have amply justified Dean Prosser's concern that in comparative negligence cases involving multiple parties, such a "[t]heoretically perfect" procedure would lead to "almost incredible complexity in the resulting issues," thereby multiplying the burdens and expense that would have to be borne by both the litigants and the court. William L. Prosser, *Law of Torts* § 67, at 438 (4th ed. 1971).[25]

II. THE COURTS BELOW PROPERLY APPLIED THE PRINCIPLES OF PROXIMATE CAUSE ON THE FACTS OF THIS CASE.

After a lengthy bench trial, Judge Fong determined that Captain Coyne's extraordinary negligence in navigating the vessel after it had reached a position of safety at 1830 was the sole proximate cause of its stranding. J.A. 173. Under standard legal principles of *respondeat superior*, whose application is not contested here, Captain Coyne's conduct was attributable to petitioners, since he was acting within the scope of his employment at the time. The trial court thus determined that

[25] This sort of judicial melee, however, is precisely what petitioners and their amicus believe is required by the comparative fault rule. *See* Pet. Br. 21 ("*Reliable Transfer* requires that *all* the faults of *all* the parties must be compared regardless of the particular order in which the faults occurred."); *id.* at 27 (same); MLA Br. 15-16 (same). Yet this position is totally at odds with the Court's holding in *Union Oil*.

respondents were not liable to petitioners for any damages that may have resulted from the stranding of the vessel. The Court of Appeals unanimously affirmed this judgment, upholding all of the trial court's factual findings. On the facts of this case, this outcome is plainly correct and amply justified.

Initially, it is crucial to recognize that the trial court found, as a matter of fact, that at 1830 the EXXON HOUSTON had reached a position of safety, at which juncture the causal forces set in motion by the initial breakout of the vessel had run their course. *See* J.A. 175 ("By 1830, the EXXON HOUSTON was heading out to sea and in no further danger of stranding. Only the grossly negligent actions of its master endangered the vessel further."). The trial court thus determined, in essence, that a complete break in the chain of causation had occurred at this juncture. One way of analyzing the facts of this case, therefore, is that the original breakout simply did not *cause* the vessel's stranding, without even reaching the perhaps more theoretical issue of whether it could be held to have proximately caused that result. As the court restated its conclusion: "The EXXON HOUSTON had reached a safe position and only the gross negligence of its master put it into further danger." *Id.* at 174.

In making this determination, the court acted as the ultimate factfinder, and its determination on this point was upheld on review by the Court of Appeals. Deference to this finding is in accord with the *Restatement*, which describes the function of the jury (or, as in this case, the court as factfinder) as including the determination of "whether the defendant's conduct has been a substantial factor in causing the harm to the plaintiff." *Restatement (Second) of Torts*, *supra*, § 434.[26] The trial court's findings and conclusions on this particular point must therefore be affirmed by this Court unless petitioners can establish that they are clearly erroneous, which they manifestly

[26] Dean Prosser likewise notes that it is properly the function of the trial court to determine "any limitation of liability as to consequences directly caused, or any case in which the defendant's responsibility is superseded by abnormal intervening forces," with any legitimately disputed factual questions to be resolved by the primary factfinder. William L. Prosser, *Law of Torts* § 45, at 290 (4th ed. 1971).

are not. *See, e.g., Anderson v. City of Bessemer City*, 470 U.S. 564 (1985). Indeed, these factual findings are especially solid under the "two court rule" that this Court applies in cases where findings of fact were concurred in by two courts below.[27]

The import of this factual finding -- that the EXXON HOUSTON reached a position of safety at 1830 -- is to compel the conclusion that the chain of causal forces from the breakout of the vessel to its stranding was effectively severed at 1830. Understood in terms of the *Restatement*, this finding precludes any conclusion that the breakout of the vessel was "a substantial factor in causing the harm [*i.e.*, the stranding]." *Restatement (Second) of Torts* § 434. This factual finding is dispositive. Petitioners seek to recast the trial court's factual findings to conform to the *Restatement* by repeatedly referring to the breakout as "*a substantial factor* in the tanker's loss," Pet. Br. 20 (emphasis added); *see also id.* at 17, 23, 29, but this is merely to take a different view of the underlying facts, which is not permissible on review here. The more accurate account is that stated by Lord Sumner in S.S. PALUDINA: respondents are "not liable for mere negligence, but only for negligence causing damage"; where the breakout "merely created the occasion" for the ultimate stranding of the vessel, but Captain Coyne reached a position of safety in which he acted as a "free agent" who "could do as he chose," then the EXXON HOUSTON "herself is the cause of the damage she has suffered," particularly where it came about by the extraordinary negligence of her captain. [1927] App. Cas. at 26-27.

In addition, the trial court determined that Captain Coyne's subsequent conduct was quite unusual -- enough so as to constitute "extraordinary negligence." From this standpoint as well, the court found that petitioners' actions were properly

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[27] *See, e.g., Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949) ("A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional show of error."); *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 665 (1987) (quoting *Graver*, 336 U.S. at 275). The "two court rule" was cited with approval in *Reliable Transfer*, 421 U.S. at 401 n.2.

viewed as the sole proximate cause of the vessel's stranding. J.A. 166-74. The trial court explicitly found that Captain Coyne did not merely make a few mistakes in his handling of the vessel, but was "grossly negligent" in a number of different ways, which led him to navigate the vessel squarely into a charted reef. *See* J.A. 171, 174, 175. The trial court rested this further determination on several alternative grounds.

First, the court recognized the settled admiralty rule that "[w]hen a moving vessel strikes a charted reef, it is presumed that the vessel is at fault." J.A. 166. This rule was first established in *THE LOUISIANA*, 70 U.S. (3 Wall.) 164 (1865), and it remains just as valid today. Professor Schoenbaum endorses its utility as embodying "both the burden of producing rebuttal evidence and the burden of persuasion," thus operating as a sensible version of *res ipsa loquitur* in cases that involve a collision between vessels or the collision of a vessel into a fixed structure. 2 Schoenbaum, *supra*, § 14-3, at 268-69. The trial court recognized that the offending party may seek to rebut the presumption, but concluded that petitioners failed to meet their burden "of proving by a preponderance of the evidence that the EXXON HOUSTON acted with reasonable care, or that the stranding was unavoidable." J.A. 167.

Second, the trial court found that Captain Coyne did not comply with standard navigation practice as stated in controlling federal regulations that require specific compliance with navigation safety directives. *See* J.A. 168-69 (quoting 33 C.F.R. § 164.11). The court found that between 1830 and 2004, Captain Coyne "failed to have the position of the vessel fixed and plotted on a navigational chart, in violation of 33 C.F.R. § 164.11(c)." J.A. 169. In addition, between 1948 and 2000, Captain Coyne was alone on the bridge, and "was not capable of both directing and controlling the movements of the vessel and fixing the vessel's position, in violation of 33 C.F.R. § 164.11(a)." J.A. 169. Failure to comply with these directives again raises a presumption of fault, which is rebuttable, but which was not rebutted by petitioners here. *Id.* at 168 (citing *THE PENNSYLVANIA*, 86 U.S. (19 Wall.) 125 (1873)).[28]

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[28] Petitioners have not challenged the validity of either the *LOUISIANA* rule or the *PENNSYLVANIA* rule in the proceedings before

The gravity and importance of strict compliance with these requirements should not be underestimated. As one leading authority has cautioned:

> The general lawyer, used to the rather fast-and-loose way of a court with a statute, must accustom himself to a far different atmosphere in dealing with these Rules, for they are strictly and literally construed, and compliance is insisted upon. This is as it should be, for, though they have the force of statute, they are not couched in legal terms of art, and are not lawyers' law, but are plain and simple directions addressed to ship's officers, the more competent among whom have most of them substantially committed to memory.

Grant Gilmore & Charles Black, *supra*, § 7-3, at 489; *see also* 2 Schoenbaum, *supra*, § 14-2, at 256 (these directives "are not mere prudential regulations or guidelines; they are binding enactments that must be adhered to closely").

In yet another attempt to recharacterize the facts here, petitioners and their amicus try to squeeze this case into the regulatory exception for actions taken *in extremis*. *See* Pet. Br. 26-27; MLA Br. 14 n.9. Yet the trial court found that "Captain Coyne and his crew had ample time to consider the situation calmly and deliberately," J.A. 159, and expressly concluded that as his decisions "were made calmly, deliberately and without the pressure of an imminent peril, the *in extremis* rule cannot be applied in this case," J.A. 170.

Third, in an extremely thorough review of the facts proved at trial, Judge Fong went on to determine that Captain Coyne committed "extraordinary" negligence in his handling of the vessel quite independent of any legal presumptions drawn from the foregoing points. In this respect, the court determined that petitioners acted "negligently, unreasonably and in violation of the maritime industry standards" in numerous ways: (1) by not deploying sufficient chain to anchor the ship at 1747; (2) by not

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this Court; and neither rule could properly be placed in issue here in any event, for the trial court specifically went on to determine that petitioners committed extraordinary negligence even apart from any such presumptions, as is further explained immediately below.

requesting assistance from the Coast Guard or others; (3) by not attempting to anchor the ship again after 1747; (4) by not continuing to back the ship after 1830 until it reached a safe distance from the shore; (5) by choosing to linger in the vicinity of the shore, only about one-half mile from the actual grounding line. J.A. 170-71. In addition, Captain Coyne's failure to plot fixes of the vessel's position between 1830 and 2004, which would have avoided any danger of stranding, "was grossly and extraordinarily negligent and in violation of the maritime industry standards." J.A. 171. His final turn, which led immediately to the grounding of the vessel, was "grossly and extraordinarily negligent and in violation of the maritime industry standards because he commenced it without knowing the vessel's position." J.A. 171. Once again, the court found that he could have avoided any danger of stranding if he had simply backed out to sea or turned in the other direction. J.A. 171.

The court thus presented ample justification for its determination that Captain Coyne's handling of the vessel was grossly and extraordinarily negligent. Under the causation principles set out in the *Restatement*, however, this fact operates as a superseding cause of the vessel's stranding. The court established this point by applying the list of considerations presented in section 442 of the *Restatement*, which are described as being "of importance in determining whether an intervening force is a superseding cause of harm to another." *Restatement (Second) of Torts* § 442. The trial court carefully applied those factors in concluding that Captain Coyne's extraordinary negligence both in "failing to fix and plot his vessel's position" and in "ordering the final starboard turn" constituted superseding causes of the stranding of the EXXON HOUSTON. J.A. 173-75.[29] The court could also have

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[29] Petitioners seek vindication in section 442B of the *Restatement*, Pet. Br. 29-30, which states that where the defendant's negligence "creates or increases the risks of a particular harm and is a substantial factor in causing that harm," then the intervening act of a third party will not relieve the defendant of liability unless it is "not within the scope of the risk created by the actor's conduct." *Restatement (Second) of Torts* § 442B. Yet the factual findings of the

relied upon section 447 of the *Restatement*, which indicates that where the intervening conduct of another party is so "extraordinarily negligent" as to be not within reasonable expectations, it stands as a superseding cause of any subsequent harm. *Restatement (Second) of Torts* § 447.

Once again, it does not matter for purposes of this Court's review whether petitioners agree or disagree with the trial court's version of the facts. In this bench trial, Judge Fong was the proper factfinder. His findings and determinations cannot be overturned "in the absence of a very obvious and exceptional showing of error." *Graver Tank & Mfg. Co.*, 336 U.S. at 275; *see supra* note 27. No such showing has been made here.

III. ADMIRALTY COURTS SHOULD APPLY PRINCIPLES OF CAUSATION FROM THE COMMON LAW OF CONTRACTS, FRAMED IN TERMS OF "FORESEEABILITY," IN CASES INVOLVING MARITIME CONTRACTS.

Petitioners have also framed their claims against respondents, based on the same underlying facts, in terms of contract law by pleading them in the alternative as warranty claims.[30] They thus seek to blur the important lines that the Court has sought to draw between tort law and warranty law concerning product liability claims. *See East River Steamship Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858 (1986). Even if petitioners' tort claims are treated under the asserted heading of warranty law, however, the same principles of causation should govern such maritime contract claims as are applied in the common law of contracts. As will be seen, these

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trial court here foreclose any determination that the breakout was "a substantial factor" in causing the stranding of the EXXON HOUSTON, and the independent and extraordinary negligence of Captain Coyne cannot be included within the scope of the risk created here, as this point is elaborated more fully in section 447 of the *Restatement*.

[30] In petitioners' complaint, the first two causes of action include warranty claims based on breach of warranty of safe berth and breach of warranty of workmanlike performance, as well as other related but more limited contract claims. *See* J.A. 33-38.

principles provide no support for petitioners in this case.

A. Foreseeability Principles from Contract Law Afford No Grounds for Granting Relief to Petitioners Here

The common law of contracts applies the same general principles of causation as does the common law of torts, with one important caveat: recovery of damages for breach of contract is more limited than recovery for breach of duty in tort law. Thus, if petitioners should not recover on their tort claims here, then likewise they should not recover on their warranty claims, which are premised on the same underlying facts.

Section 351 of the *Restatement (Second) of Contracts* specifies that the foreseeability principle is the accepted limit of recovery on contract claims at common law:

> (1) Damages are not recoverable for loss that the party in breach did not have reason to foresee as a probable result of the breach when the contract was made.
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> (2) Loss may be foreseeable as a probable result of a breach because it follows from the breach
>
> (a) in the ordinary course of events, or
>
> (b) as a result of special circumstances, beyond the ordinary course of events, that the party in breach had reason to know.

Restatement (Second) of Contracts, § 351 (1981). As Comment a to this section explains further: "[T]he requirement of foreseeability is a more severe limitation of liability than is the requirement of substantial or 'proximate' cause in the case of an action in tort or for breach of warranty." *Id.* at cmt. a.

The same point is made by the leading commentators. Professor Williston observes: "The law of torts and the law of contracts differ in this respect. For a tort, the defendant becomes liable for all proximate consequences, while for breach of contract he is liable only for consequences which were reasonably foreseeable at the time when it was entered into, as probable if the contract were broken." 11 *Williston on Contracts* § 1344, at 227 (W. Jaeger ed.) (3d ed. 1968). Similarly, Professor Corbin notes that numerous courts have barred recovery "because the injury was said not to be the

'proximate' result of the breach," but where they have ventured to define this principle, "it will practically always be found that it is expressed in terms of the possibility of foresight." 5 *Corbin on Contracts* § 1000, at 26 (1964); *see also id.* at § 997; *see also East River Steamship Corp.*, 476 U.S. at 874-75 (noting and explaining this same distinction in the context of general maritime law); *Petitions of The Kinsman Transit Co.*, 338 F.2d 708, 721-26 (2d Cir. 1964) (same), *cert. denied*, 380 U.S. 944 (1965).

It has been widely recognized that the same underlying facts could give rise to either a tort claim or a breach of warranty claim, depending on a claimant's mere choice of pleading, particularly with the modern evolution in tort law from negligence claims through warranty claims to strict products liability claims. In this situation, the distinction between tort law and contract law has been minimized by expressly basing a party's recovery for a breach of warranty that causes injury to person or property on tort principles of proximate cause. *See, e.g.*, *Restatement (Second) of Contracts* § 351 cmt. a (noting that the requirement of proximate cause applies "in the case of an action in tort or for breach of warranty"). The Uniform Commercial Code, in particular, accomplishes this result by specifying that in warranty cases involving "injury to person or property," recovery may be had only for consequential damages "proximately resulting" from the breach of warranty. U.C.C. § 2-715(2)(b); *see, e.g.*, *Waggoner v. Town & Country Mobile Homes, Inc.*, 808 P.2d 649, 652 (Okla. 1990) ("manufacturers' products liability and the UCC warranty provisions provide parallel remedies" for injury to other property).

All of these same principles should be applied in cases involving maritime contract claims. Although the foreseeability test is highly fact-specific, it is a familiar standard that the courts apply in many areas of law. It remains serviceable in resolving maritime contract claims for the same reasons that it has been maintained in the common law of contracts. Indeed, the Court has approved the foreseeability principle as a means of resolving true maritime warranty claims. *See East River Steamship Corp.*, 476 U.S. at 874. At the same time, principles of proximate causation are most

appropriate to govern breach of warranty claims involving consequent injury to person or property -- which are indistinguishable from tort claims -- and should be applied in such cases consistent with the Uniform Commercial Code.

Applying these principles to petitioners' claims affords them no grounds for relief here. As explained at length in Section II, *supra*, the trial court determined that the breakout was not a proximate cause of the stranding of the EXXON HOUSTON, and that Captain Coyne's conduct, which was extraordinarily negligent in a number of respects, was in fact the sole proximate cause of the stranding. *Compare Union Oil*, 409 U.S. at 146. These findings preclude recovery on petitioners' tort claims, and thus *a fortiori* preclude recovery on their contract claims. The trial court also expressly found that *neither* the decision to turn the ship toward the coast *nor* the actual attempt to make the turn, which was "extraordinarily negligent," was "a foreseeable consequence of the breakout." J.A. 175. These further findings, which petitioners have not challenged on review, also preclude relief on their warranty claims.[31] Even if these findings had been challenged, they could not be overturned by this Court "in the absence of a very obvious and exceptional showing of error." *Graver Tank & Mfg. Co.*, 336 U.S. at 275; *see also supra* note 27. No such showing has been made or could be made in this case.

B. These Common-Law Principles Should Be Applied in Cases of Maritime Contracts

The principles described in the preceding section, which govern contract claims at common law, should be applied in federal admiralty law for at least three reasons.

First, petitioners have presented no sound reason why admiralty law should differ from the common law with respect to these points. Instead, they simply quote, out of context, a passage from one case involving a warranty claim, which does not advance their position. Pet. Br. 35. The quoted passage is:

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[31] At one point, petitioners do contradict the trial court's finding that Captain Coyne's conduct was not foreseeable, *see* Pet. Br. 29, but this is just an improper recasting of the facts, which disregards the express finding that the conduct was extraordinarily negligent.

> . . . liability should fall upon the party best situated to adopt preventive measures and thereby to reduce the likelihood of injury. Where, as here, injury-producing and defective equipment is under the supervision and control of the stevedore, the shipowner is powerless to minimize the risk; the stevedore is not.

Italia Societa per Azioni di Navigazione v. Oregon Stevedoring Co., 376 U.S. 315, 324 (1964). Even taken out of context, this passage is fully consistent with the purposes served by application of the doctrine of proximate cause.

A fuller examination of the case, however, shows that this passage (and the case as a whole) did not discuss whether to apply the doctrine of proximate causation to warranty claims; instead, it concerned whether a stevedore's liability under its warranty of workmanlike service should be premised on negligence or strict liability. In holding that strict liability should be applied, the Court explained its reasons in the passage quoted above. *See id.* at 323-24; *see also East River Steamship Corp.*, 476 U.S. at 865-66 (characterizing *Italia Societa* in these terms). Yet this discussion does not illuminate the issues raised here concerning maritime warranty claims. Strict liability already applies to these claims, which are essentially a repackaging of petitioners' tort claims. The principal issue before this Court, instead, is the permissible grounds for recovery on these claims under the foreseeability principle. None of petitioners' citations challenges the established doctrine of foreseeability in contract law.[32]

Second, the Court recently evinced its concern to maintain a sensible relationship between tort law and warranty law in maritime cases that involve claims of consequent injury to

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[32] Although the infirmities of *Italia Societa* itself are perhaps not especially germane to the resolution of this case, it should be pointed out that Professor Schoenbaum fully canvasses the "spurious origin" of the warranty of workmanlike performance -- one of the claims pleaded by petitioners in this case, *see* J.A. 36-37 -- which he describes as "one of the most ambiguous and controversial concepts in all of admiralty law," whose application has "had very harsh and strange results," and which has been only partially overruled by subsequent statutes. *See* 1 Schoenbaum, *supra*, § 5-8, at 190-99.

person or property. In the *East River Steamship* case, the Court held that strict products liability law is part of the general maritime law. *See* 476 U.S. at 864-66. Yet where a claim is based on damage only to the product itself, with no consequent injury to the person or to any other property, the Court held that such claims can be based only on warranty law, not on tort law, for otherwise "contract law would drown in a sea of tort." *Id.* at 866. By the same token, where, as in this case, a tort claim involving injury to other property is repackaged as a warranty claim, recovery should not be expanded beyond the principles of proximate cause that apply in tort law, so as to prevent tort law from drowning in a sea of warranty. For this reason also, the most sensible approach here is to follow section 2-715(2)(b) of the Uniform Commercial Code and hold that tort principles of proximate cause govern recovery on such warranty claims, as explicitly sanctioned by the *Restatement (Second) of Contracts*. *See id.* § 351 cmt. a.

Third, the concern that federal admiralty law should not stimulate forum shopping by departing from settled common-law principles is also apt in contract cases, where disputes over the proper extent of admiralty jurisdiction frequently recur. As Justice Harlan observed, "The boundaries of admiralty jurisdiction over contracts . . . being conceptual rather than spatial, have always been difficult to draw." *Kossick v. United Fruit Co.*, 365 U.S. 731, 735 (1961). It thus is especially important to maintain harmony between these two founts of law whenever possible. This objective can be readily achieved by applying accepted principles of contract and warranty law to the same kinds of claims when raised in a maritime setting. *See, e.g.*, 1 Schoenbaum, *supra*, § 5-7, at 186 (advocating reliance by admiralty courts on UCC concepts in addressing claims based on express and implied warranties, which will lead to "very little, if any, difference in the cases between the general admiralty law, the UCC, and the common law").

IV. TRIAL COURTS ENJOY THE SAME BROAD DISCRETION TO ESTABLISH ORDERLY AND EFFICIENT PROCEDURES FOR DETERMINING THE FACTUAL AND LEGAL ISSUES IN ADMIRALTY CASES AS IN ALL OTHER CASES.

Petitioners' brief reveals that the real object of their recriminations is the bifurcation order issued by Judge Fong prior to trial. *See* Pet. Br. 3-8, 17, 21-22, 33. Yet because petitioners did not seek certiorari on the question of whether the trial court erred in granting bifurcation, they cannot now seek reversal on this ground. *See* S. Ct. R. 14.1(a); *see also, e.g., Yee v. City of Escondido*, 503 U.S. 519, 535-38 (1992) (explaining importance of strict compliance with the rule).

In any event, petitioners' complaints on this score should have no bearing on the Court's resolution of the questions actually presented in this case. For it is well settled that trial courts enjoy broad discretion to issue such orders in order to structure trial proceedings in the manner that they determine would be most conducive to expedition and economy for both litigants and the court. Indeed, Rule 42(b) of the Federal Rules of Civil Procedure -- which is fully applicable in admiralty cases -- specifically vests such authority in the District Court:

> **(b) Separate Trials.** The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be most conducive to expedition and economy, *may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, or third-party claims, or issues*, always preserving inviolate the right of trial by jury. . . .

Fed. R. Civ. P. 42(b) (emphasis added); *see also* 9 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2388, at 475 (1995) (Rule 42(b) applies in admiralty cases).

Petitioners baldly contend that the trial court's decision to bifurcate the causation issues among the multiple parties in this case deprived them of due process of law. *See* Pet. Br. 33 (citing *Gasoline Prods. Co. v. Champlin Refining Co.*, 283 U.S. 494 (1931)).[33] Yet petitioners are in no different position from any other litigant who feels aggrieved that the trial court exercised its discretion to set the schedule of proceedings in a manner that it did not desire. In courts across the country every day, parties lose cases in part because the trial court has isolated a potentially dispositive issue and given it priority over other issues that might have redounded more advantageously for them had the issues been considered in a different order. This is likewise true in many admiralty cases. *See, e.g., Lisa v. Fournier Marine Corp.*, 866 F.2d 530 (1st Cir.) (bifurcating liability issues for trial in admiralty case), *cert. denied*, 493 U.S. 819 (1989); *McGraw v. J. Ray McDermott & Co.*, 81 F.R.D. 23 (E.D. La. 1978) (same); *Bernardo v. Bethlehem Steel Co.*, 200 F. Supp. 534 (S.D.N.Y. 1961) (same), *aff'd*, 314 F.2d 604 (2d Cir. 1963). Such trial court rulings do not call for constitutional relief.[34]

The Court of Appeals considered and rejected petitioners' claim that the bifurcation order in this case represented an abuse of discretion and a deprivation of their constitutional rights. The court recognized that this claim ultimately reduced to nothing more than petitioners' argument that the doctrine of superseding cause is not viable in maritime tort cases, with which the court disagreed. As the court concluded:

> Given the validity of the superseding cause doctrine in cases such as this one, the district court's

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[33] The *Gasoline Products* case is truly inapposite here, for it addressed Seventh Amendment concerns in a case where the Court was troubled about the prospect of retrying part of a case before a jury in a posture that seemed likely to generate "confusion and uncertainty" for the jury. *See* 283 U.S. at 500-01. There is no right to a jury trial in admiralty cases, *see, e.g., Waring v. Clarke*, 46 U.S. (5 How.) 441, 460 (1847); Fed. R. Civ. P. 38(e), and no prospect remains in this case of a jury trial on any nonmaritime issue, *see supra* note 5.

[34] Indeed, it has been held that Rule 42(b), which was adopted after the Court's decision in the *Gasoline Products* case, has incorporated compliance with that standard into its provisions. *See, e.g., In re Bendectin Litig.*, 857 F.2d 290, 308-09 (6th Cir. 1988), *cert. denied*, 488 U.S. 1006 (1989).

> decision to bifurcate the trial cannot be said to have 'severed the unseverable' or to have prejudiced Exxon. *Because bifurcation of the trial was expeditious and appropriate in light of the circumstances of this case and did not result in prejudice to Exxon*, we hold that the district court did not abuse its discretion in choosing to take this approach.

J.A. 226 (emphasis added).

This conclusion is plainly correct. In granting bifurcation, Judge Fong realized that "bifurcation could obviate the need for extensive discovery, trial preparation, and weeks of trial if the court first determines the cause or comparative causes of the grounding, excluding the cause of the breakout," which would require much more complicated matters of proof. J.A. 71. The court also noted that Phase One of the trial would address 80% of petitioners' damage claims, which suggested that "a separate trial offers the probability of settlement after the conclusion of the first phase." J.A. 72. Moreover, the court concluded that if it were to determine "that the navigation of the EXXON HOUSTON was the proximate cause of its grounding, then it would be unnecessary for the court to resolve the issue of 'comparative fault'" or to calculate the damages related to the stranding of the vessel. J.A. 72. *Compare Union Oil*, 409 U.S. at 146 (same). For these reasons, the trial court acted well within its discretion in ordering bifurcation to focus initially on the issue of proximate cause. Indeed, such orders are commonplace in complex tort cases involving multiple claims and multiple parties. *See, e.g., In re Beverly Hills Fire Litig.*, 695 F.2d 207 (6th Cir. 1982) (granting bifurcation in tort case on issue of causation), *cert. denied*, 461 U.S. 929 (1983); *In re Bendectin Litig.*, 857 F.2d at 308-14 (granting bifurcation in tort case on issue of proximate cause).

Moreover, there is no reason why this Court should hamper federal admiralty courts in exercising their discretion to structure trial proceedings "conducive to expedition and economy" in the same manner as the federal courts do in other civil cases under Rule 42(b). Maritime torts involving multiple parties can be just as complex, and perhaps even more so, than such cases which arise on land. The need for orderly and

efficient trial proceedings, which in the long run serve the interests of courts and litigants alike, is as great in admiralty cases as in all others.

Indeed, a leading authority on trial procedure in the federal courts expressly states that the application of this rule *may be even more common and beneficial in admiralty cases than in other civil cases*:

> In certain suits in admiralty, separation for trial of the issues of liability and damages, or of the extent of liability other than damages, . . . had been common and beneficial, particularly in view of the statutory right to interlocutory appeal in admiralty cases . . . .
>
> Thus, the amendment of Rule 42(b) in 1966 was intended to reassure the admiralty bar that there would be no change in this practice.

9 Charles A. Wright & Arthur R. Miller, *supra*, § 2388, at 475. The Court should thus reject petitioners' invitation to constitutionalize their quarrel with the manner of proceedings followed here.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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